

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARREN GLENN MILHOFF,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 09-1679
)	Judge Joy Flowers Conti/
MARK BENSON; ERIC MILLER; LUKE)	Magistrate Judge Francis X. Caiazza
NELSON; TROY OWEN; RICHARD)	
SALATINE; and Corporal McBRIDE,)	
)	
Defendants.)	Re ECF Nos. 32 & 35

MEMORANDUM ORDER

The above-captioned *pro se* prisoner civil rights action was filed by Darren Glenn Milhoff (“plaintiff”) and was received by the Clerk of Court on November 23, 2009. It was referred to the late Chief United States Magistrate Judge Amy Reynolds Hay for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Civil Rules 72.C and D. Subsequent to her untimely death the case was referred to Magistrate Judge Caiazza.

Magistrate Judge Caiazza’s Report and Recommendation, ECF No. 40, was filed on February 24, 2011. The report recommended that the Pennsylvania State Police Defendants’ partial motion to dismiss, ECF No. 32, be granted. It further recommended that Corporal McBride’s partial motion to dismiss, ECF No. 35, be granted in part and denied in part, recommending that the motion be granted as to plaintiff’s Eighth Amendment claims but denied as to plaintiff’s intentional infliction of emotional distress claim. The report also recommended that the complaint be *sua sponte* dismissed without prejudice as against defendant Salatine,

pursuant to Federal Rule of Civil Procedure 4, due to plaintiff's failure to effectuate service upon defendant Salatine within the time required by that Rule. Service of the report was made on the plaintiff at his address of record. The plaintiff was informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and with the local rules, that he had a specific period of time in which to file his objections. Plaintiff filed no objections.

Accordingly, after *de novo* review of the pleadings and the documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 18th day of March, 2011;

IT IS HEREBY ORDERED that the Pennsylvania State Police Defendants' partial motion to dismiss, ECF No. 32, is **GRANTED** and plaintiff's Eighth Amendment claims against them are dismissed with prejudice as are plaintiff's state law claims of intentional infliction of emotional distress, as are all claims against them in their official capacities. IT IS FURTHER ORDERED that Corporal McBride's partial motion to dismiss, ECF No. 35, is **GRANTED IN PART AND DENIED IN PART**, it is **GRANTED** as to plaintiff's Eighth Amendment claim against Corporal McBride and as to any municipal liability claims against him, and consequently, any official capacity claims against him but it is **DENIED** as to plaintiff's state law claim of intentional infliction of emotional distress against Corporal McBride. IT IS FURTHER ORDERED that the complaint is *sua sponte* **DISMISSED**, albeit without prejudice, as against defendant Salatine for plaintiff's failure to effectuate service upon defendant Salatine within the time period required by Federal Rules of Civil Procedure 4. Accordingly, the only remaining claims are plaintiff's Fourth Amendment excessive force and failure to protect claims against the remaining defendants and his state law claim of intentional

infliction of emotional distress as against Corporal McBride.

IT IS FURTHER ORDERED that the Report and Recommendation, ECF No. 40, filed on February 24, 2011 by Magistrate Judge Caiazza, is adopted as the opinion of the Court.

Plaintiff is reminded of his obligation to keep the court informed of any change in his address.

s/Joy Flowers Conti
Joy Flowers Conti
U.S. District Judge

Dated: March 18, 2011

cc: The Honorable Francis X. Caiazza
United States Magistrate Judge

Darren Glenn Millhoff
HQ1282
SCI Huntingdon
1100 Pike Street
Huntingdon, PA 16654

All counsel of record by CM-ECF